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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

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GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

CitiMortgage, Inc.	)	Case No.: CV-04-534146
Plaintiff	)	Judge Carolyn B. Friedland
vs.	)	ANSWER AND COUNTERCLAIM
Leonard S. Priebe, et al.	)	
Defendants	)	

Now come Defendants Leonard and Joanne Priebe ("the Priebes"), by and through undersigned counsel Sebraien M. Haygood, and hereby file their Answer and Counterclaim to Plaintiff CitiMortgage Inc.'s ("CitiMortgage") *Complaint in Foreclosure and for Reformation of Mortgage* filed on or about June 21, 2004. For their answer, Defendants Leonard and Joanne Priebe state the following:

COUNT ONE

1. The Priebes deny for want of knowledge sufficient to form a belief the allegations in Paragraph 1 of the Complaint.

COUNT TWO

2. The Priebes deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 2 of the Complaint.

3. The Priebes deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 3 of the Complaint.

4. The Priebes deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 4 of the Complaint.

EXHIBIT
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5. The Priebes deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 5 of the Complaint.

6. The Priebes deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 6 of the Complaint.

COUNT THREE

7. The Priebes are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Complaint.

8. The Priebes are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8 of the Complaint.

9. Further, the Priebes deny each and every, all and singular, the statements and allegations contained in all counts in CitiMortgage's Complaint, which are not specifically herein admitted to be true.

FIRST AFFIRMATIVE DEFENSE

DWK

10. The Priebes have paid their mortgage debt in full and satisfied the terms of the mortgage and CitiMortgage was compensated for whatever payments lawfully due to it.

SECOND AFFIRMATIVE DEFENSE

DWK

11. CitiMortgage failed to attach necessary documents to its complaint.

THIRD AFFIRMATIVE DEFENSE

D

12. The Priebes affirmatively allege that CitiMortgage's Complaint fails to allege facts sufficient to constitute a cause of action against it upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

DWK

13. CitiMortgage failed to provide a complete written payment history to the Priebes, despite numerous oral and written requests for such.

FIFTH AFFIRMATIVE DEFENSE

DWK

14. Any damages which CitiMortgage claims it sustained were brought about by the failure of CitiMortgage to prevent, mitigate, reduce and/or minimize said damages.

SIXTH AFFIRMATIVE DEFENSE

D

15. CitiMortgage's claims are barred by reason of its intentional or innocent misrepresentations.

SEVENTH AFFIRMATIVE DEFENSE

D

16. CitiMortgage's claims are barred by the Statute of Frauds.

EIGHTH AFFIRMATIVE DEFENSE

D

17. The Priebes affirmatively allege that the complaint is filed in violation of Civ.R. 11.

NINTH AFFIRMATIVE DEFENSE

D

18. The Priebes affirmatively allege that CitiMortgage has filed a frivolous lawsuit against them in violation of R.C. 2323.51.

TENTH AFFIRMATIVE DEFENSE

19. The Priebes will rely on any and all further defenses which become available or appear during Discovery proceedings in this Action, and hereby reserve the right to amend this Answer for the purpose of asserting any such affirmative defenses.

ELEVENTH AFFIRMATIVE DEFENSE

20. The Priebes have not knowingly or voluntarily waived any defense they may have in this action and the Priebes reserve the right to amend their Answer and raise additional defenses as they become known.

COUNTERCLAIM

BACKGROUND

1. The parties entered into a mortgage agreement, dated and filed on or about October 25, 1974. As part of the agreement, the Priebes' initial payment, due on November 1, 1974, was remitted from the escrow account.

2. The Priebes continued to make regular monthly mortgage payments to the holder of their mortgage note.

3. The Priebes' records indicate that said mortgage loan was paid in full on July 1, 2003.

4. CitiMortgage began contacting the Priebes on or about September 3, 2003, claiming the Priebes still owed a balance on the account.

5. Defendant Leonard Priebe repeatedly requested a complete payment history and a copy of the original Note and Mortgage in an effort to resolve the dispute.

6. CitiMortgage never provided the information.

7. Although believing their mortgage obligation to CitiMortgage was fully satisfied, the Priebes made three additional payments, under protest, in an effort to resolve the dispute.

8. The Priebes continued to contact CitiMortgage regarding the dispute and the requested information right up until the time CitiMortgage filed the within foreclosure action.

9. Since the filing of the Foreclosure Complaint, the Priebes have been contacted by several persons in regard to the filing of the Complaint.

10. The filing of the Complaint for Foreclosure has adversely affected the Priebes' credit rating and ability to obtain further credit.

11. The filing of the Complaint in Foreclosure has clouded the Priebes' title to their property.

COUNT ONE

12. The Priebes reallege the allegations contained in paragraphs 1through 11 as though fully rewritten set forth herein.

13. CitiMortgage falsely claim that the Priebes have not paid their mortgage in full.

14. CitiMortgage maliciously filed a Complaint in Foreclosure, after either not attempting to determine if the mortgage was paid in full or with knowledge that the loan was fully paid.

15. CitiMortgage's act of filing the Complaint damaged the Priebes by placing their home in foreclosure proceedings, by noticing their creditors that their home was in foreclosure, by public notice of the suit, by incurring legal costs, and by lowering their credit rating.

16. The Priebes pray for damages to be proved at trial, for punitive damages, for attorney fees, and for whatever other relief the court deems just and appropriate.

COUNT TWO

17. The Priebes reallege paragraphs 1 to 16 as though fully rewritten set forth herein.

18. According to the Priebes' records, the said debt is paid and they have satisfied the terms of the mortgage.

19. The Priebes pray that the Court determine that the debt is fully satisfied, that they receive a title to their property unencumbered by CitiMortgage's lien, and for whatever damages the Court determines to be fair and just.

COUNT THREE

20. The Priebes reallege paragraphs 1 through 19 as though fully rewritten set forth herein.

21. CitiMortgage had a duty to administer the terms of the Mortgage and Note in a fair manner, determine the accurate amount owed by the Priebes on said Note, and to provide the Priebes with a payment history and copies of the Mortgage and Note upon request.

22. CitiMortgage breached that duty by failing to accurately determine the amount owed on the note and by not providing the Priebes with a payment history and copies of the Mortgage and Note.

23. The Priebes have been damaged by the actions of CitiMortgage by making additional mortgage payments beyond what was owed, by the time, expense, and effort they incurred in attempting to resolve the dispute with CitiMortage, and by the filing of the Complaint in Foreclosure.

24. The Priebes pray that they be awarded their damages as determined at trial and that they be granted whatever other relief as this Court may deem just and appropriate.

COUNT FOUR

25. The Priebes reallege paragraphs 1 through 24 as though fully rewritten set forth herein.

26. CitiMortgage violated the Real Estate Settlement Procedures Act, 12 USCS Section 2605, by not responding to the Priebes' inquiries regarding the payment history of the account.

27. The Priebes pray that they be awarded such damages as are permitted under the statute and for whatever other relief as this Court may deem just and appropriate.

WHEREFORE, the Priebes pray that this Honorable Court awards them actual damages to be proved at trial, statutory damages, punitive damages, attorney fees and their costs of this litigation, and grant the Priebes such other relief as this Court may deem just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Answer and Counterclaim has been sent by regular United States Mail, this 15th day of July, 2004, to the following:

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